

A.G. Contract No.: KR05-0132TRN
ADOT ECS File No.: JPA 04-152
Project: Coyote Springs-Forest Boundary
Section: SR 89A
TRACS No.: H6148 01C
Budget Source Item No.: 72505

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
UNITED METRO MATERIALS INC
d/b/a Rinker Materials

THIS AGREEMENT is entered into 28th March, 2005 pursuant to the Arizona Revised Statutes § 28-401, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and UNITED METRO MATERIALS INC. (the "UMMI") d/b/a Rinker Materials.

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-408 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. UMMI has resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the United Metro Materials Inc d/b/a Rinker Materials

3. Incident to the State's pavement preservation project on State Route (SR) 89A, and as part of the UMMI's current development requirements, it is in the best interest of the State for the UMMI to construct, pave and provide a right-turn lane and an acceleration lane into the UMMI's pit entrance located on SR 89A, at Milepost (MP) 329.8, including temporary striping on this portion of SR 89A (the "Project"). The Project is to include the following: 1) UMMI is to construct a new right-hand turn lane and an acceleration lane with 8" Aggregate Base Course (ABC) and 2" of new Asphalt Concrete (AC); 2) UMMI is to ensure that the new pavement shall be flush with the existing pavement elevation on SR 89A; 3) UMMI is to place temporary paint striping on such portion of SR 89A at MP 329.8; 4) UMMI is to obtain an Arizona Department of Transportation (ADOT) Right-of-Way Encroachment Permit prior to constructing the new right-hand turn lane and acceleration lane as stated herein; and 5) The State will subsequently overlay the new right-hand turn lane and acceleration lane with 4" of AC and 1/2" of Asphalt Rubber Friction Course (ARFC) as part of the State's pavement preservation project. The UMMI will be responsible for and will reimburse the State for the cost of the overlay, more or less, in an amount currently estimated at \$75,000.00. Such estimated amount of \$75,000.00 will be based upon the unit cost in the contract awarded by the State for the State's pavement preservation project. It is understood and agreed to by both parties herein that the UMMI's portion of the above-referenced Project is to be completed before July 1, 2005. The State has scheduled pavement preservation surfacing on SR 89A between MP 324.84 to MP 331.55 and it is agreed by both parties herein that the UMMI will not delay in any way the State's scheduled pavement preservation on SR 89A as stated herein.

4. The parties hereto agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties hereto.

5. Nothing herein shall be construed to impose an obligation on the part of the State, in any way, to fund the UMMI's improvements to SR 89A associated with the UMMI's development requirements.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State has and shall:

a. Upon execution of this Agreement and within thirty (30) days of the contract award by the State, invoice UMMI for the cost of the overlay of the Project, more or less, in an amount currently estimated at \$75,000.00. Such estimated amount of \$75,000.00 will be based upon the unit cost in the contract awarded by the State for the State's pavement preservation project.

b. Prepared and provided to UMMI design plans for the State's pavement preservation project, specifications and other such documents required by UMMI to design the Project.

c. Review to UMMI's design documents and provide review comments to UMMI and approve the final design as appropriate.

d. Be responsible for any design consultant or construction claims for extra compensation attributable to the State for the Project.

e. Grant UMMI an ADOT encroachment permit required for construction of the Project on SR 89A at the Developer's materials pit entrance at MP 329.8.

f. Confer with UMMI on any Project-related design modifications.

g. Overlay the new right-hand turn lane and acceleration lane with 4" of AC and 1/2" of Asphalt Rubber Friction Course (ARFC) as part of the State's pavement preservation project.

2. UMMI has and shall:

a. Upon execution of this Agreement and upon receipt of an invoice to be delivered by the State, within thirty-days (30), remit to the State, more or less, in an amount currently estimated at \$75,000.00. Such estimated amount of \$75,000.00 will be based upon the unit cost in the contract awarded by the State for the State's pavement preservation project.

b. Reviewed the State's pavement preservation project design plans, specifications and other such documents at the 100% design stage and has incorporated them into their design plans, specifications and other such documents for the Project.

c. Incorporate the State's review comments into the final design for the Project.

d. Obtain an ADOT encroachment permit required for construction of the Project on SR 89A at MP 329.8 and complete their portion of the Project, as described herein, before to July 1, 2005.

- e. Construct a new right-hand turn lane and an acceleration lane with 8" Aggregate Base Course (ABC) and 2" of new Asphalt Concrete (AC)
- f. Ensure that the new pavement shall be flush with the existing pavement elevation on SR 89A.
- g. Confer with the State on any Project-related design modifications.
- h. Submit engineered plans stating that the work done within ADOT's right of way will be to ADOT's standards.
- i. Be responsible for any liability other than the State related claims that may be a result of the Project including but not limited to any design consultant or construction claims for extra compensation attributable to UMMI.

III. MISCELLANEOUS PROVISIONS

- 1. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by UMMI for the vicarious liability of the State as a result of entering into this Agreement. Each party to this contract is responsible for its own negligence.
- 2. This Agreement shall remain in force and effect until completion of the Project and reimbursements; provided, however, that this Agreement may be cancelled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party herein.
- 3. UMMI shall not transfer, sale, assign or otherwise dispose of all or any part of the Agreement or the rights hereunder without prior written consent of the State.
- 4. This Agreement may be canceled in accordance with Arizona Revised Statutes § 38-511.
- 5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.
- 6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".
- 7. **Non-Availability of Funds:** Every payment obligation of the State and UMMI under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and/or UMMI at the end of the period for which the funds are available. No liability shall accrue to the State and/or UMMI in the event this provision is exercised as a result of termination under this paragraph.
- 8. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in A.R.S. § 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

United Metro Materials, Inc.
d/b/a Rinker Materials
ATTN: Wes Bryant,
Northern Arizona Region Manager
701 North 44th Street
Phoenix, AZ 85008

10. Attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

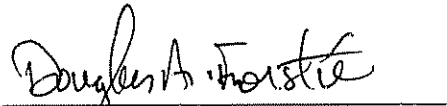
UNITED METRO MATERIALS INC.
d/b/a Rinker Materials

STATE OF ARIZONA
Department of Transportation

By


WES BRYANT
Northern Arizona Region Manager

By


DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

04-152-Agreement
REV 8/FINAL-14Mar2005-IH

04/09/05

JPA 04-152

APPROVAL OF THE UNITED METRO MATERIALS, INC d/b/a RINKER MATERIALS

ATTORNEY

I have reviewed the above referenced proposed agreement, between the ARIZONA DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and United Metro Materials, Inc. d/b/a Rinker Materials, and declare this Agreement to be within the powers and authority granted to the Corporation and Karl Watson or Wes Bryant has the authority to sign this Agreement on behalf of the Corporation. .

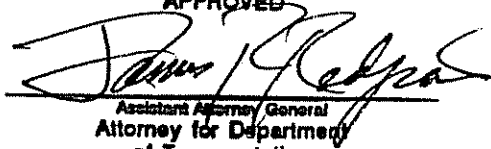
DATED this 15th day of March, 2005.

mJ F Eg-

General Counsel

United Metro Materials, Inc.

APPROVED



Assistant Attorney General
Attorney for Department
of Transportation

Date 3/29/05